

**FILED**

MAY 27 2011

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN DIVISION  
EASTERN

DAVID CREWS, CLERK  
BY *[Signature]* Deputy

KEVIN GRACE

PLAINTIFF

v.

NO. 1:11CV123-A-D

SPENCER ENTERPRISES, INC. D/B/A  
ASHLEY FURNITURE HOMESTORE

DEFENDANT

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**COMPLAINT**

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The plaintiff Kevin Grace files this suit for wrongful discharge pursuant to the 1994 Uniform Services Employment and Re-employment Rights Act (USERRA). 38 USC §4301 et seq. As authorized by 38 USC §4323(a)(2)(A), the plaintiff seeks back pay, liquidated damages, legal fees, and reinstatement.

***Jurisdiction***

1. This Court has jurisdiction pursuant to 28 USC § 1331 and 38 USC §4323(b)(3).

***Parties***

2. The plaintiff, Kevin Grace, a resident of Slatillo, Lee County, Mississippi, was an employee of the defendant, Spencer Enterprises d/b/a Ashley Furniture HomeStore, ("Ashley Furniture") as that term is defined by 38 USC §403(3). The defendant wrongfully terminated the plaintiff on September 23, 2008.

3. The defendant Spencer Enterprises, inc. is a Tennessee Corporation doing business in Mississippi, and is an employer as that term is defined in 38 USC §403(4)(A).

***Facts***

4. The plaintiff is a member of the Mississippi Army National Guard assigned to the 151<sup>st</sup> Aviation Battalion in Tupelo, Mississippi.

<p><b>JURY TRIAL REQUESTED</b></p>
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5. As a member of the 151<sup>st</sup> Aviation Battalion, the plaintiff is a member of the United States Armed Forces and a member of the uniformed services as that term is defined by 38 USC §4303 (16).

6. The plaintiff's military obligations to the Mississippi Army National Guard required him to attend basic and advanced individual training for 6 months and thereafter to attend military drill one weekend a month and to attend two weeks of annual training each summer.

7. The plaintiff enlisted in the Mississippi Army National Guard on or about June 5, 2008.

8. On or about August 23, 2008, the plaintiff notified his supervisor, Brian Warhurst, that he had enlisted in the National Guard, and would be taking leave to attend 6 months of basic training beginning in November 2008.

9. The plaintiff detected an immediate change in attitude on the part of his supervisor.

10. On or about September 13, 2008, the plaintiff's supervisor asked him to volunteer for an upcoming layoff. The supervisor said that the plaintiff had another source of income (the National Guard) whereas some other employees did not. The plaintiff did not agree to volunteer.

11. On September 23, 2008, the plaintiff was advised that he and another employee in his department had been laid off.

12. The plaintiff reported to basic training on November 15, 2008. He completed basic training and AIT.

13. The plaintiff was discharged from active duty on May 20, 2009. He will be assigned to the 151<sup>st</sup> Aviation Unit in Tupelo.

#### ***Violations of Law***

14. The defendant knowingly and willfully violated 38 USC §4311(A) by (a) discharging him because of his membership in and service to his country and his state as a member of the Mississippi National Guard.

#### ***Request for Relief***

15. The plaintiff seeks lost wages and benefits, liquidated damages, reasonable attorney's fees and reinstatement.

Dated: May 25, 2011.

Respectfully submitted,

A handwritten signature in black ink that reads "Mike Farrell". The signature is fluid and cursive, with the first name "Mike" and last name "Farrell" clearly distinguishable.

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Mike Farrell (MSB # 5147)

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